

(1986) 03 KAR CK 0046

In the Karnataka High Court

Case No : Income Tax R.Cs. No's. 179 to 184 of 1983

Commissioner of Income Tax

APPELLANT

Vs

K.L. Venugopal

RESPONDENT

Date of Decision : 30-03-1986

Acts Referred:

Income Tax Act, 1961 — Section 139, 144, 148

Citation : (1986) 162 ITR 551

Hon'ble Judges : Jagannatha Shetty, Acting C.J.; N.D. Venkatesh, J; Mohammad Sharif, J

Bench : Full Bench

Judgement

Jagannatha Shetty, Actg.C.J.

1. The two questions referred by the Tribunal for the opinion of this court are :

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the Income Tax Officer had no jurisdiction to call for returns u/s 148 in the status of an "individual" when the assessee had filed the returns in the status of a "Hindu undivided family" ? 2. whether, on the facts and in the circumstances of the case the Income Tax Appellate Tribunal is right in law in holding that the assessments made u/s 144 in the status of an "individual" for non-compliance with notice u/s 148 , were not valid in law, and, therefore, by dismissing the Department's appeal and allowing the assessee's cross-objections ?"

2. The assessee had been assessed in the status of an "individual" up to the assessment year 1970-71. For the first time in 1971-72, the assessee claimed the status of a "Hindu undivided family". The Income Tax Officer negatived the claim on the ground that the assessee had obtained property and business from his grandfather by virtue of his will and so the status continued to be that of individual. The position was the same for the assessment years 1972-73 and 1973-74. For the years 1974-75 to 1976-77 again the assessee filed the returns

in the status of a "Hindu undivided family". The Income Tax Officer, instead of rejecting the claim and making assessments in the status of an individual as in the past, issued notices u/s 148 calling upon the assessee to submit returns in the status of an "individual". For those notices, there was no response. Thereupon, the Income Tax Officer took action u/s 147(a) read with section 144 and made the assessment orders for the years 1974-75 to 1976-77. The assessee appealed to the Appellate Assistant Commissioner who agreed with the Income Tax Officer in making the assessment but directed him to accept the returned figures. The Revenue appealed to the Appellate Tribunal. The assessee filed cross-objections challenging the validity of the assessment orders.

3. The questions before the Tribunal was whether the Income Tax Officer was justified in ignoring the return of income filed by the assessee in the status of a Hindu undivided family and issuing notice to the assessee u/s 148. The Tribunal observed as follows :

"In this case, there is only one assessee assessed on P. A. No. 44002 PQ 7103. The notice is being issued to the individual. It is under that P. A. No., the assessee continued to file the return in the status of a Hindu undivided family. It cannot be said that these returns are not in compliance with section 139. The point of difference between the Income Tax Officer and the assessee is that while the assessee declares his status as Hindu undivided family, the Income Tax Officer determines it as individual. The Act gives him powers to determine the correct status. Therefore, we have to agree with the assessee that a valid return has been filed and reassessment was illegal. The decision of the Bombay High Court in Lalbhai Ghatabhai Vs. S.M. Kadri, Income Tax Officer, Circle II A, (Lalbhai Ghatabhai) would apply to the present case. The position might have been different if there had been two assessments on the same person in two different status. In this connection, we have to refer to the decision relied on by the learned Departmental representative in the case of Commissioner of Income Tax Andhra Pradesh Vs. K. Adinarayan Murty, In this case, notice was issued in the status of an individual but the assessee filed the return in the status of a Hindu undivided family. Later, as the correct status was determined to be that of Hindu undivided family, the Income Tax Officer issued another notice to the Hindu undivided family ignoring the first return. The assessment was completed on the basis of the return filed in compliance with the second notice. The Supreme Court upheld the assessment on the ground that the first notice being illegal, the return filed in response to that notice, viz., the first return, has no legal sanction and, therefore, the Income Tax Officer was right in ignoring it. In the present case, no such illegality could be made out in respect of the return filed by the assessee. The earlier proceedings have all along been in the status of an individual, but the assessee, to keep his claim regarding the status alive, continues to file the returns in the status of a Hindu undivided family. The Income Tax Officer as in the past should have determined the correct status as individual and proceeded to complete the assessment. To presume that there is no compliance with the provisions of section 139 , unless and until the assessee

files a return in the status as determined by the Income Tax Officer, is not correct. Accordingly, we allow the cross-objections of the assessee and set aside the orders of the Appellate Assistant Commissioner."

4. The first question referred to us relates to the validity of the notice issued u/s 148 by the Income Tax Officer calling upon the assessee to submit a return in the status of an "individual" when the assessee had filed the return in the status of a "Hindu undivided family". It is not in dispute that the assessee was all along being assessed in the status of an individual. That was his recognized status. If he was aggrieved by that status recognized, he could have preferred an appeal against the previous assessments. But he did not do it. He silently accepted that position. When there was no return filed by the assessee in the status of an individual, the Income Tax Officer was justified in issuing a notice u/s 148 calling upon him to file the return.

5. In response to that notice, the assessee could have filed a return in the status of an individual showing the income as "nil". But he did not respond to that notice. In the circumstances, the Income Tax Officer was also justified in proceeding on the basis that there was no return filed by the assessee in response to the notice issued u/s 148.

6. The question still to be considered is whether in the absence of any return filed in response to the notice issued u/s 148, the Income Tax Officer ought to have taken note of the return filed by the assessee in the status of a "Hindu undivided family". In our opinion, there was no such obligation under the statute. Controversy of this nature has been concluded by the decision of the Supreme Court in Commissioner of Income Tax Andhra Pradesh Vs. K. Adinarayan Murty, There, the assessee was a Hindu undivided family. The Income Tax Officer issued a notice to the assessee u/s 34 of the Act ignoring the return filed by the assessee in the status of an "individual". The assessee, however, filed a return in the status of a "Hindu undivided family". In the meantime, the Appellate Assistant Commissioner in an appeal against the assessment for the earlier years held that the status of the assessee was that of "Hindu undivided family". Thereafter, the Income Tax Officer issued a fresh notice u/s 34 to reassess the income of the assessee for the concerned year as "Hindu undivided family". A second return was filed by the assessee pursuant to the second notice and the Income Tax Officer made an assessment on the basis of the second return. The question arose whether the assessment made pursuant to the second return. The question arose whether the assessment made pursuant to the first notice, was valid. The Supreme Court observed (at pages 610 and 611) :

"The Income Tax Officer could not have validly acted on the return filed by the assessee in the status of "Hindu undivided family" and any assessment made by the Income Tax Officer on such return would have been invalid in law because the notice u/s 34 had been issued in the status of "individual".....

Under the scheme of the Income Tax Act, the "individual" and the "Hindu

undivided family" are treated as separate units of assessment and if a notice u/s 34 of the Act is wrongly issued to the assessee in the status of an "individual" and not in the correct status of "Hindu undivided family", the notice is illegal and all proceedings taken under that notice are ultra vires and without jurisdiction."

7. It will be clear from these observations that the assessee who was in the status of an individual did not file his return. He had no doubt filed a return in the status of a "Hindu undivided family". The Income Tax Officer could not but ignore that return. The Income Tax Officer was also justified in making assessment u/s 147 read with section 144 of the Act. We, therefore, answer the first question in the negative and in favour of the Revenue.

8. Consequently, the answer to the second question must also be in the negative and in favour of the Revenue. We answer it accordingly.